

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 10% or less of the total value of the foreign technology. Before you may rely upon the *de minimis* exclusion for foreign-made technology commingled with controlled U.S.-origin technology, you must file a one-time report. See supplement No. 2 to part 734 for submission requirements.

(d) *25% De Minimis Rule.* Except as provided in paragraph (a) of this section and subject to the provisions of paragraph (b) of this section, the following reexports are not subject to the EAR when made to countries other than those listed in Country Group E:1 of supplement No. 1 to part 740 of the EAR. See supplement No. 2 to this part for guidance on calculating values.

(1) Reexports of a foreign-made commodity incorporating controlled U.S.-origin commodities or “bundled” with U.S.-origin software valued at 25% or less of the total value of the foreign-made commodity;

NOTES TO PARAGRAPH (d)(1): (1) U.S.-origin software is not eligible for the *de minimis* exclusion and is subject to the EAR when exported or reexported separately from (i.e., not bundled or incorporated with) the foreign-made item.

(2) For the purposes of this section, “bundled” means software that is reexported together with the item and is configured for the item, but is not necessarily physically integrated into the item.

(3) The *de minimis* exclusion under paragraph (d)(1) only applies to software that is listed on the Commerce Control List (CCL) and has a reason for control of anti-terrorism (AT) only or software that is classified as EAR99 (subject to the EAR, but not listed on the CCL). For all other software, an independent assessment of whether the software by itself is subject to the EAR must be performed.

(2) Reexports of foreign-made software incorporating controlled U.S.-origin software valued at 25% or less of the total value of the foreign-made software; or

(3) Reexports of foreign technology commingled with or drawn from controlled U.S.-origin technology valued at 25% or less of the total value of the foreign technology. Before you may rely upon the *de minimis* exclusion for foreign-made technology commingled with controlled U.S.-origin technology,

you must file a one-time report. See supplement No. 2 to part 734 for submission requirements.

(e) You are responsible for making the necessary calculations to determine whether the *de minimis* provisions apply to your situation. See supplement No. 2 to part 734 for guidance regarding calculation of U.S. controlled content.

(f) See § 770.3 of the EAR for principles that apply to commingled U.S.-origin technology and software.

(g) *Recordkeeping requirement.* The method by which you determined the percentage of U.S. content in foreign software or technology must be documented and retained in your records in accordance with the recordkeeping requirements in part 762 of the EAR. Your records should indicate whether the values you used in your calculations are actual arms-length market prices or prices derived from comparable transactions or costs of production, overhead, and profit.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 734.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 734.5 Activities of U.S. and foreign persons subject to the EAR.

The following kinds of activities are subject to the EAR:

(a) Certain activities of U.S. persons related to the proliferation of nuclear explosive devices, chemical or biological weapons, missile technology as described in § 744.6 of the EAR, and the proliferation of chemical weapons as described in part 745 of the EAR.

(b) Activities of U.S. or foreign persons prohibited by any order issued under the EAR, including a Denial Order issued pursuant to part 766 of the EAR.

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§ 734.6 Assistance available from BIS for determining licensing and other requirements.

(a) If you are not sure whether a commodity, software, technology, or